IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4320 of 2004

Gurudeo Foregings Pvt.Ltd, ... Applicants

V/s

Hasmukh B. Shah & Anr. ... Respondents

CORAM: V.M. KANADE, J.

DATED: MARCH 4,2005

Shri V.B. Ghorpade for applicants

Shri A.S. Shitole,APP for the State

P.C. :-

. Heard learned counsel for applicants. It is submitted by learned counsel for applicants that there was no averment in the complaint stating that which particular Director or Managing Director was looking after day to day affairs of the company. It is further submitted that there is no averment to that effect that applicant was responsible for conducting the business of the company. The learned counsel for applicants submits that the complaint filed by complainant is time barred as there was delay in filing the complaint.

. In paragraphs No.3 and 4 of exhibit “A” annexed to the complaint, there is specific averments to that effect that accused No. 2 as Managing Director of the company issued four cheques in favour of complainant drawn on Central Bank of India,Nashik were subsequently dishonoured.

In my view, in view of specific averments made in the complaint that accused No.2 as Managing Director issued four cheques and said cheques were dishonoured. The question, as to whether accused No.2 is liable under provision of section 138 of Negotiable Instruments Act, would be answered only after evidence is led by both the parties in the trial court. No case has been made out for the reliefs as sought. No interference is called as regards the issuance of process while following the decision of Apex Court under section 482 of Criminal Procedure Code and section 138 of the said Act. So far as second point regarding limitation is concerned, the trial court will decide the complaint within a stipulated period only after evidence is adduced by both the parties. Under the circumstances, the criminal application stands dismissed. The trial court is directed to decide the complaint within a period of 3 months. No order as to costs.

(V.M. Kanade, J.)